

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

Gary R. McLean, dba Trendmaker Mortgage; and
Gary R. McLean, Designated Broker,

Respondents.

NO. C-02-341-02-SC01
(Old No. 2002-143-C01)

STATEMENT OF CHARGES and NOTICE OF
INTENT TO REVOKE LICENSE AND IMPOSE
FINES

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of October 22, 2002, the Director institutes this proceeding and finds as follows:

I. FACTS

1. Respondents:

A. Gary R. McLean is known to conduct the business of a mortgage broker as Trendmaker Mortgage at:

2535 Rudkin Road
Union Gap, WA 98903

B. Gary R. McLean was named designated broker on March 17, 1999, and has continued as designated broker to date.

2. License: Gary R. McLean was licensed by the Department of Financial Institutions ("Department") to conduct business as a mortgage broker on March 17, 1999, and has continued to be licensed to date.

STATEMENT OF CHARGES and NOTICE OF INTENT
TO REVOKE LICENSE AND IMPOSE FINES

DEPARTMENT OF FINANCIAL INSTITUTIONS
Consumer Services Division
210 11th Ave SW, Room 300
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8795

- 1 **3. Continuing Education Requirement:** A certificate of satisfactory completion of an approved
2 continuing education course was due to the Department no later than March 31, 2002. The Department notified
3 Respondents of this requirement and of the due date by correspondence dated April 11, 2002.
- 4 **4. Issuance of Directive:** On August 2, 2002, the Department issued a directive to Respondents requiring
5 the submission of a certificate of satisfactory completion of an approved continuing education course.
- 6 **5. Failure to Submit Certificate:** To date, the Department has not received the required certificate due
7 from Respondents.

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9 II. GROUNDS FOR ENTRY OF ORDER

- 10 **1. Continuing Education Requirement:** Pursuant to RCW 19.146.215 and WAC 208-660-042, the
11 designated broker of every licensee shall complete an annual continuing education requirement and file a
12 certificate of satisfactory completion no later than the last business day of the month in which the anniversary
13 date of the issuance of the licensee's license occurs.
- 14 **2. Authority to Revoke License:** Pursuant to RCW 19.146.220(2)(b)(iii), and WAC 208-660-160(19),
15 the Director may revoke a license for failure to comply with any directive or order of the Director and for failure
16 to provide a required certificate of satisfactory completion of an approved continuing education course.
- 17 **3. Authority to Charge Examination Fee:** Pursuant to RCW 19.146.228(2), and WAC 208-660-060(2), upon
18 completion of any examination of the books and records of a licensee, the Department will furnish to the licensee a
19 billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-six dollars
20 and twenty-six cents (\$46.26) per hour that each staff person devoted to the examination.
- 21 **4. Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c)(ii) and WAC 208-660-165, the Director
22 may impose fines on the licensee for failure to comply with any directive or order of the Director.

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1. Respondents' mortgage broker license be revoked,
2. Respondents pay an examination fee to be calculated at \$46.26 per hour for each staff hour devoted to the investigation; and
3. Respondents pay a fine of \$2,250.

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RCW 19.146.215 Continuing education – Rules. The designated broker of every licensee shall complete an annual continuing education requirement, which the director shall define by rule. [1997 c 106 § 11; 1994 c 33 § 11.]

RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules. (1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(. . .

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(. . .

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(. . .

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director – Hearing – Sanction. The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

RCW 19.146.223 Director – Administration and interpretation. The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

RCW 19.146.225 Director – Rule-making powers. In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only after seeking the advice of the mortgage brokerage commission and to govern the activities of licensed mortgage brokers and other persons subject to this chapter. [1994 c 33 § 15; 1993 c 468 § 9.]

RCW 19.146.228 Fees – Rules – Exception. The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the banking examination fund, unless the consumer services account is

created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account. [1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

WAC 208-660-042(1) Continuing education requirement. (1) The principal or designated broker of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

WAC 208-660-060 Department's fees and assessments. (1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

WAC 208-660-160 License application denial or condition; license suspension or revocation. The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

... (19) Has failed to provide a required certificate of satisfactory completion of an approved continuing education course.

WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act. Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.

1 Intent to Revoke License and Impose Fines. You may require the attendance of witnesses by subpoena. If you are
2 limited English- speaking or hearing impaired, you have the right to have an interpreter appointed at no cost to you, as
3 discussed below.

4 INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-
5 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for you is
6 a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate in spoken
7 language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN INTERPRETER,
8 then a qualified interpreter will be appointed at no cost to you or to the witness. You may request the appointment of a
9 qualified interpreter by indicating your request on the attached Application for Adjudicative Hearing form.

10 YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the
11 Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this will
12 constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the
13 Statement of Charges and Notice of Intent to Revoke License and Impose Fines. Upon such a finding by the
14 Director a final order will be immediately entered disposing of this matter and ordering that your license be revoked and
15 that you pay fines, as described in the Statement of Charges and Notice of Intent to Revoke License and Impose
16 Fines. If you desire a hearing in this matter, please return the attached Application for Adjudicative Hearing to:

17 Department of Financial Institutions, Division of Consumer Services
18 Attn: Victoria W. Sheldon
19 PO Box 41200
Olympia, Washington 98504-1200

20 Dated this 10 day of October, 2002.

21 /S/
22 MARK THOMSON, Assistant Director
23 Division of Consumer Services
24 Department of Financial Institutions

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Gary R. McLean, dba Trendmaker Mortgage; and
Gary R. McLean, Designated Broker,
Respondents.

APPLICATION FOR ADJUDICATIVE HEARING

Gary R. McLean, dba Trendmaker Mortgage; and
Gary R. McLean, Designated Broker.

Department of Financial Institutions
Division of Consumer Services
Attn: Victoria W. Sheldon
PO Box 4200
Olympia, Washington 98504-1200

APPLICATION FOR HEARING

1 INSTRUCTIONS: Circle your desired responses to items I, II, and III below.

3 I.

4 I [REQUEST] [DO NOT REQUEST] a formal hearing in this matter.

6 II.

7 I [WILL] [WILL NOT] be represented by an attorney. His/her name, address, and telephone number are:

8 _____
9 _____
10 _____

12 III.

13 I [REQUEST] [DO NOT REQUEST] that a qualified interpreter be appointed at no cost to me to interpret for
14 (myself) or (my witness(es)). My, or my witness's(es'), primary language is _____ (identify language).
15 My, or my witness's(es'), hearing impaired status is _____ (identify hearing impaired status). I
16 understand that a qualified interpreter will be appointed at no cost to me or to my witness(es).

18 IV.

19 You have the right to demand a hearing; to be represented by an attorney at your own expense; to subpoena
20 witnesses to the hearing or subpoena the production of books or documents and to otherwise defend against the
21 Statement of Charges and Notice of Intent to Revoke License and Impose Fines.

23 WARNING: FAILURE TO COMPLETE AND MAIL THIS DOCUMENT SO THAT IT IS RECEIVED
24 BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN 20 DAYS AFTER YOU RECEIVED THE

1 STATEMENT OF CHARGES AND NOTICE OF INTENT TO REVOKE LICENSE AND IMPOSE FINES
2 WILL RESULT IN THE DISPOSITION OF THIS CASE AS AUTHORIZED BY RCW 34.05.440.

3
4 Dated this _____ day of _____, 2002.

5 By:

6 Signature: _____

7 Name: _____

8 Print Name

9 Address (if identified address is incorrect):

10 _____
11 _____
12 _____